

1
2
3
4 BEFORE THE
5 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
6

7 In the Matter of:	)	DECISION
)	
8 County of Los Angeles Local Enforcement	)	APPEAL OF THE CALIFORNIA
9 Agency, City of Los Angeles Local	)	INTEGRATED WASTE MANAGEMENT
10 Enforcement Agency, and North Valley	)	BOARD'S ACCEPTANCE AND
Coalition	)	PROCESSING OF BROWNING FERRIS
	)	INDUSTRIES' APPLICATION FOR A
11 Petitioners	)	SOLID WASTE FACILITIES PERMIT FOR
	)	A COMBINED SUNSHINE CANYON
12 vs.	)	LANDFILL, SYLMAR CALIFORNIA
)	
13 California Integrated Waste Management)	
14 Board, purportedly acting as Enforcement	)	PUBLIC RESOURCES CODE §§45030
15 Agency,)	
	)	Hearing Date: May 19, 2008
16 Respondent	)	Time: 1:30 p.m.
	)	Location: Room 550, Joe Serna Cal/EPA
	)	Building, 1001 I Street, Sacramento,
	)	California
)	
)	
)	

20
21 This matter came on regularly for hearing before the California Integrated Waste
22 Management Board on May 19, 2008 at 1:30 p.m. Petitioner the City of Los Angeles Local
23 Enforcement Agency was represented by Keith Pritsker, attorney at law. Petitioner the County
24 of Los Angeles Local Enforcement Agency was represented by Fred Pfaeffle, attorney at law.
25 Petitioner the North Valley Coalition was represented by Kelly Smith, attorney at law.
26 Respondent the CIWMB Staff ("Board Staff") was represented by Steven Levine and Michael
27

1 Bledsoe, attorneys at law. Browning Ferris Industries was represented by R. Scott Pearson,
2 attorney at law.

3 The matter before the Board is an appeal by the City of Los Angeles Local Enforcement
4 Agency, the County of Los Angeles Local Enforcement Agency (collectively "City/County"),
5 and the North Valley Coalition ("NVC"), of a determination by Staff of the California Integrated
6 Waste Management Board ("Board Staff"), purportedly acting as Enforcement Agency, to
7 process an Application for a Solid Waste Facilities Permit submitted by Browning Ferris
8 Industries ("BFI") for a combined Sunshine Canyon Landfill. Requests for a Hearing to Appeal
9 Board Staff's determination were filed by City/County and NVC on February 15, 2008 and
10 March 4, 2008, respectively, each accompanied by a Statement of the Issues on Appeal.

11 The hearing before the Hearing Panel was held on May 13, 2008 and presented solely
12 legal issues, the City/County, NVC and Board Staff having stipulated to a Statement of Facts
13 ("Stipulated Facts") to be utilized as evidence therein, in lieu of proceeding with an evidentiary
14 proceeding in the matter. The Hearing Panel issued its decision on May 15, 2008, and that
15 Decision was appealed to the full Board.

16 The Board, having considered the record of the matter now pending, including the written
17 and oral arguments submitted by the parties and the Stipulated Facts, and also including a brief
18 filed by the County of Los Angeles' Local Enforcement Agency responding to the BFI Brief, and
19 additional information provided regarding whether the appeal included the issue of the
20 "completeness" of BFI's application, to the extent they have been deemed relevant, and for good
21 cause appearing, hereby issues its Decision:

22 **DECISION**

23 The appeal of Petitioners is denied and the decision by the Hearing Panel is upheld in its
24 entirety.

25
26
27 ///

1
2 **DISCUSSION**

3 The Board hereby incorporates by reference, and adopts, the Decision of the Hearing
4 Panel, including the Findings of Fact and Conclusions of Law therein. At the hearing before the
5 full Board, the petitioners raised several new arguments, in addition to reiterating their previous
6 arguments before the Hearing Panel, which require additional findings herein.
7

8 **ADDITIONAL FINDINGS OF FACT**

- 9 1. The County's e-mail to Board Staff Counsel of April 7, 2008 did not constitute an
10 amended Statement of Issues with which to add the issue of "completeness" of BFI's
11 application to this appeal.
12
- 13 2. New or additional information provided by BFI for the solid waste facility permit
14 application in May 2008, can not be used to challenge Board Staff's determination in
15 March 2008 on whether or not the application was complete in March. Board Staff did
16 not have the information provided two months later at the time they made their
17 determination.
18
- 19 3. The "void" that requires Board Staff to act as Enforcement Agency for a combined
20 Sunshine Canyon landfill was created by BFI's application for a solid waste facility
21 permit in combination with the lack of a Local Enforcement Agency with authority to act
22 over the entire proposed site. Local land use approvals are irrelevant to the issue of a
23 regulatory "void."
24

25 ///

26 ///

27 ///

1
2
3 **ADDITIONAL CONCLUSIONS OF LAW**

4 **1. Petitioner's "new information" failed to show that the issue of completeness was**
5 **properly raised in this appeal.**

6 The County of Los Angeles provided an e-mail sent to an attorney for Board Staff,
7 Michael Bledsoe, dated April 7, 2008, indicating that it wished to add to the appeal a
8 challenge to Board Staff's determination that BFI's application for a solid waste facility
9 permit for the combined Sunshine Canyon Landfill was complete. The County pointed to the
10 fact that this e-mail requested a call if there were any need to amend or modify statements of
11 issues to do so. The County argued that this e-mail was sufficient to add this matter to the
12 appeal.
13

14 However, the County failed to note that a previous e-mail from Mr. Bledsoe, dated March
15 21, 2008, expressly noted that an amended Statement of Issues would be required. In
16 addition, at the hearing Mr. Bledsoe noted, and provided for the record, contemporaneous
17 notes indicating that the County had been informed that an amended Statement of Issues was
18 necessary, and that the County had agreed to file one as soon as possible. The County did not
19 offer anything for the record to contradict this information.
20

21 The requirement for an amended Statement of Issues is not merely bureaucratic. Besides
22 being required by statute, it is the Statement of Issues that sets the framework for the appeal
23 and what will be argued. Public Resources Code sections 44310(a) and 45030(b) both
24 include a requirement for an appeal request and a separate requirement for a statement of
25 issues for the hearing panel and a statement of the legal and factual basis for the appeal for
26 the appeal to the full Board.
27

1 As noted by the Hearing Panel, not only did Petitioners not file an amended Statement of
2 Issues, they provided no discussion or argument about the issue in their briefs. Board Staff
3 provided no argument in its briefs nor facts in the Stipulated Facts on this issue because it
4 was not put on notice that this issue had been included in Petitioner's appeal. At best, if the
5 Board were to determine that this issue was included in this appeal, it would have to be
6 remanded to the Hearing Panel to allow for the issue to be fully argued and to ensure that the
7 record was complete. Such action is unnecessary in this case because as noted above, the
8 Board has determined that the Hearing Panel correctly found that this issue was not properly
9 included or raised as part of this appeal.
10
11
12

13 **2. Petitioners improperly attempted to use information not available to Board Staff at**
14 **the time of its determination to argue that its determination of "completeness" was**
15 **incorrect.**

16 At the hearing before the full Board, Petitioners argued that the fact that BFI had
17 provided additional information a week or so before the hearing in May was a basis for finding
18 that Board staff had incorrectly determined the application to be complete in March. They argued
19 that this later information showed a "rush by Board Staff to issue the permit."
20

21 However, even if the issue of completeness had been properly included in this appeal,
22 which as noted above, it was not, it would be inappropriate and illogical to use information from
23 two months after the fact, that Board Staff did not and could not have had, as a basis for
24 challenging the determination made at that earlier time. If Petitioner's believe that the new
25 information provided in May should result in a new determination, they should file a new appeal.
26
27

1 **3. Petitioners mischaracterized Board Staff's position with respect to the "void" which**
2 **Board Staff is acting to fill.**

3 At the hearing before the Board, Petitioners spent a significant amount of time arguing
4 that Board Staff had improperly used the City and County's issuance of land use approvals for
5 the combined landfill to create a "void" that Board Staff needed to fill by acting as Enforcement
6 Agency. This argument included a number of assertions by Petitioners that the Board has no role
7 in making determinations about local land use conditions and whether or not they have been
8 fulfilled. Therefore, Petitioners argue that Board Staff should not be able to act as Enforcement
9 Agency for a combined landfill until the City and County opine that the local land use conditions
10 for combining the landfill have been fulfilled.
11

12 Board Staff noted that they were in agreement with Petitioners that they had no role in
13 determining land use condition compliance, but noted that compliance with local land use
14 conditions was irrelevant for the legal determination regarding a "void." The Petitioner's
15 arguments on this issue mischaracterize Board Staff's position on the creation of the "void." The
16 "void" in this case was created by BFI's filing of the application for a site that spanned two
17 different jurisdictions where there was no Local Enforcement Agency with authority to act
18 regarding the entire proposed site. Even if no local land use approvals had been granted at all in
19 this case, Board Staff would have been required by law to act on the application submitted,
20 because there exists no Local Enforcement Agency with jurisdiction to act on that application.
21 Public Resources Code sections 43202 and 43205 expressly provides that if no local enforcement
22 agency is designated and certified, then the board shall act as the enforcement agency for that
23 jurisdiction.
24
25
26
27

1 It should also be noted that on a number of occasions, the Board has issued a solid waste
2 facility permit to operators even though new or revised local land use approvals had not been
3 obtained by those operators. Statute maintains a clear separation in authority between issues of
4 local concern and issues within the jurisdiction of the Board and Local Enforcement Agencies
5 implementing the Board's statutes and regulations (See for example, Public Resources Code
6 section 40059, 43020 and 43021). Likewise, it maintains a clear separation between the
7 jurisdiction of the Board and other State agency, such as the Water Board, requirements (See for
8 example, Public Resources Code section 43020, 43021, 43101, and 44009). Petitioner's
9 argument that the Board could not act on this application until the City and County determined
10 that the local land use conditions had been fulfilled would ironically result in them using the
11 Board's processes to enforce local land use conditions. As noted by Board Staff at the hearing, to
12 the extent that the City or County believe the landfill is not authorized to move forward, they
13 may use their local land use authority to enforce their own requirements.

16 At the hearing, the Petitioners argued that if someone were applying to put a landfill in
17 Beverly Hills, Board Staff would have acted differently, and that the present action would allow
18 landfill operators to "go around" Local Enforcement Agencies if they were not getting what they
19 wanted.

21 Leaving aside whether this argument was intended to imply that the Board would show
22 favoritism in how it dealt with some cities, this argument is without merit and irrelevant. Unlike
23 the present situation, Beverly Hills has a Local Enforcement Agency that would have jurisdiction
24 over such a permit (Los Angeles County), so Board Staff would not have a "void" to fill in such
25 a situation. If for some reason, Beverly Hills, or any other jurisdiction for that matter, did not
26 have a Local Enforcement Agency with jurisdiction within its boundaries, Board Staff would
27

1 have a “void” to fill, and would have to act as Enforcement Agency for that jurisdiction.

2 Nothing in Board Staff’s actions or this Decision would allow an operator to apply directly to the
3 Board for a permit where there existed a Local Enforcement Agency with appropriate authority.

4 **4. Petitioner’s non-legal arguments about whether or not the Board staff**
5 **determination to act as Enforcement Agency for the combined Sunshine Canyon**
6 **Landfill are irrelevant to whether or not Board staff is acting properly under the**
7 **law.**

8
9 The Petitioners made a number of non-legal arguments regarding Board Staff’s
10 determination to act as Enforcement Agency for the combined landfill, including that their
11 actions would result in “watered down permit conditions,” not be appropriate because it would
12 be better to have a landfill regulated by those “close by” the landfill, would result in “potential
13 pollution,” and that the “practical, economic, and moral implications” of Board Staff’s
14 determination require the Board to overturn that determination.

15
16 The Board finds all of these arguments to be irrelevant to whether or not Board Staff’s
17 determination was legally proper. They are also without any basis in the record.

18
19 **5. The appropriate forum for Petitioner’s arguments about appropriate solid waste**
20 **facility conditions would be before the Board when it considers concurrence in the**
21 **proposed solid waste facility permit for the combined Sunshine Canyon Landfill.**

22 The Petitioners made a number of arguments regarding their fears that a Board-issued solid
23 waste facility permit would not include appropriate conditions. They also argued that the public
24 would be deprived of an opportunity to comment on or provide information regarding BFI’s
25 application and changes to that application, if the Board acted as Enforcement Agency and if it
26 did not find that the application was incomplete.
27

1 These assertions are without any basis in the record as there are no facts to indicate that
2 Board Staff will not properly process the proposed permit as required by law or that it will not
3 include all appropriate conditions required by law. Furthermore, the proposed permit is required
4 to be considered at a public hearing where all interested parties will have an opportunity to
5 comment on and provide relevant information about the proposed permit (Government Code
6 section 11120 et seq.). To the extent the Board were to determine that some of that information
7 required additional conditions or review of the proposed permit because it did not meet the
8 requirements of law, the Board has the authority to so direct at that time.
9

10 **6. The City's need to include local conditions due to staff shortages is not a valid legal**
11 **basis for the Board to overturn Board staff's determination, or the Hearing Panel's**
12 **Decision.**

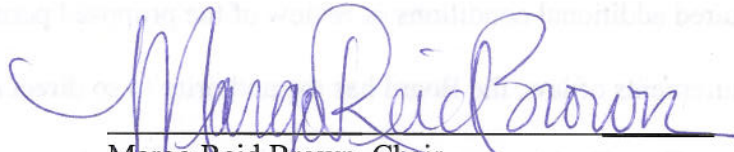
13 At the end of the hearing, the City's representative noted that if the Board issued the
14 permit for the combined Sunshine Canyon Landfill, the solid waste facility permit would not
15 include all of the conditions that the City wanted to include. However, the examples provided by
16 the City were conditions that would not be appropriate for inclusion in the solid waste facility
17 permit because they are issues of local concern, not requirements derived from the Integrated
18 Waste Management Act or its implementing regulations (Public Resources Code Sections 40059,
19 43020 and 43021). The conditions noted by the City included requiring the use of natural gas
20 vehicles and several other conditions that are not within the authority of the Enforcement Agency
21 under statute or regulations (Public Resources Code section 43209). The City further revealed
22 that the reason it needed to include these conditions in the solid waste facility permit was that it
23 did not have its own enforcement staff to enforce these local conditions on its own.

24 The City's staffing decisions are not a basis for overturning Board Staff's and the
25 Hearing Panel's determinations on what the law requires. Given how strongly the City argued
26 that the Board had no authority to enforce or interpret local land use conditions, it is
27

1 disingenuous at best for the City to subsequently argue that the reason Board Staff should not act
2 as Enforcement Agency and issue the permit is because the City needs to include local land use
3 and other locally derived conditions in the solid waste facility permit. The Local Enforcement
4 Agency's authority under the solid waste facility permit is a limited to requirements that derive
5 from the Integrated Waste Management Act and Board-adopted regulations to implement the
6 Act.

7 THIS DECISION SHALL BE EFFECTIVE UPON SERVICE

8
9 Dated: 5/30/08

10 
11 Margo Reid Brown, Chair
12 California Integrated Waste Management Board
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Case No.: NONE

I am employed in the Legal Office of the California Integrated Waste Management Board, which is the office of a member of the California State Bar under which member's direction this service is made. My business address is California Integrated Waste Management Board, P.O. Box 4025, Sacramento, CA 95812-4025 and my business electronic mail address is ycox@ciwmb.ca.gov. I am 18 years of age or older and not a party to this matter.

Raymond G. Fortner, Jr., County Counsel
Frederick W. Pfaeffle, Principal Deputy County Counsel
fpfaeffle@counsel.lacounty.gov

Rockard J. Delgadillo, City Attorney
Keith W. Pritsker, Deputy City Attorney
Keith.Pritsker@lacity.org

Kelly T. Smith
The Smith Firm
ktsmith@thesmithfirm.com

1
2 Steven Levine, Senior Staff Counsel
3 Michael Bledsoe, Senior Staff Counsel
4 slevine@ciwmb.ca.gov
5 mbledsoe@ciwmb.ca.gov

6 R. Scott Pearson
7 Weston Benshoof Rochefort Rubalcava & MacCuish LLP
8 spearson@wbcounsel.com

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Executed on the 30th day of May 2008, at Sacramento, California.

12 
13 _____
14 Yvette Cox
15 Declarant
16
17
18
19
20
21
22
23
24
25